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SENATOR BRASHEAR: Senator Foley, the...I may be making it...I may be oversimplifying it, but I don't think I am. The fact is, in 1997, this body, for and on behalf of all the people, adopted a hate crime statute. I understand your feeling about that. But nevertheless, it was Senator Robak's legislation, it was worked on in the Judiciary Committee, it was adopted by the body, it was signed by the Governor, and we have told our people that we will have...we have...that we have a crime against...we have a crime defined as hate crimes. The problem is that our procedure is what we call in the law constitutionally suspect. We know it could be challenged. And based upon the Apprendi and the Ring decisions by the United States Supreme Court, because we do not let the jury make the decision based on evidence beyond a reasonable doubt, but rather we would have it be a separate hearing by the judge and the judge would make the decision, we are not in complete conformity with due process, and therefore we need to make this repair in order to make the law we have on the books, passed by the will of the people, as I define it at least, work.

SENATOR FOLEY: Thank you. That's helpful. Let's take a hypothetical here. Let's suppose we have a very violent, unstable person, who is anti-Semitic. Tragically, these people are out there. And let's suppose that this person, who hates Jewish people, kills a Jewish baby at one day of birth, one day after birth. Could that be a hate crime?

SENATOR BRASHEAR: Yes.

SENATOR FOLEY: Suppose the person, the assailant, killed the child one day before birth. Could that be a hate crime?

SENATOR BRASHEAR: Yes. We...because of work you've done, we have a fetal homicide law. So if we allowed the...if we made these corrections, and the prosecuting attorney could prove beyond a reasonable doubt what was going on, then I believe you have at least the underpinnings for a hate crime.

SENATOR FOLEY: But unborn children are not specified in your list of potential victims. Senator Brashear has moved off the